

P.R No-430 of 2018
(State of Assam Vs Md. Safiqul Haque @ Islam)

IN THE COURT OF CHIEF JUDICIAL MAGISTRATE, SONITPUR:: TEZPUR

P. R. Case No. 430 of 2018

Under section-294/506 of I.P.C

Present:- **Sri N. J. Hoque, AJS,**
Chief Judicial Magistrate,
Sonitpur, Tezpur

State of Assam

-Vs-

Md. Safiqul Islam @ Haque

S/O:- Md. Anowar Hussain

R/O:- Gutlong

P/S:- Tezpur

Dist:-Sonitpur, Assam

.....Accused Person

Advocate appeared:

Mr. Nibha Devi, Addl. P.P.....For the State

Mr. Bijoy Basumatary, Ld. Advocate.....For the accused person

Evidence recorded on	:- 02.09.2019, 03.01.2020, 03.12.2020 & 28.01.2021
Date of Offence Explanation	:- 05.05.2019
Argument heard on	:- 05.02.2021
Judgment delivered on	:- 05.02.2021

J U D G M E N T

History of Prosecution's Case

1. Prosecution case appears to be in a nutshell is that one Miust. Rahima Begum lodged an ejahar before the O/C of Tezpur P.S alleging inter alia that she got married with one Mainuddin around 14 years back and now both were living peacefully as husband and wife. It is also stated that the FIR named accused has posted joint photograph of her with the accused in his facebook account stating that he was having 14 years of love affairs with her and the same as defamed her and also caused mental torture to her husband. On being asked

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the accused has rebuked her with obscene words and also threatened her of dire consequences.

“INVESTIGATION”

2. On receipt of the ejahar, Tezpur P.S Case No. 900 of 2017 under sections-420/294/506 of I.P.C was registered and investigation into. On completion of the investigation, the I.O. of this case submitted charge sheet u/s-420/294/506 of I.P.C against the accused person.

CHARGE & TRIAL

3. In pursuant to the court's process, the accused person appeared before the court and he was allowed to go on bail vide Order dated-05.06.2017 passed by Hon'ble Sessions Judge, Sonitput at Tezpur in Misc. (CrI) Case No-346 of 2017. Copies u/s-207 of CrPC was furnished to the above named accused person. After hearing both side, particulars of offences u/s-294/506 of I.P.C was read over and explained to the accused person by my Ld. Predecessor in office, to which he pleaded not guilty and claimed to be tried.

STATEMENT OF DEFENCE

4. The prosecution side to prove the guilty of the accused persons examined only 05 (Five) numbers of witnesses including the informant-cum-victim of this case. Considering the testimonies of witnesses, prosecution side declined to adduce further evidence before this court. Hence, the evidence of prosecution side is closed. Accused person is examined u/s-313 Cr.P.C and his pleas of denial are recorded in separate sheet and the same kept with the case record. Accused declined to adduce evidence on his defence.

ARGUMENT

5. I have heard arguments of both sides, gone through the case record in the backdrop of evidences offered before this court by prosecution side.
6. **The points for determination in this case are:-**
 - (i.) Whether on or before 14.05.2017 at about 12:40 PM at a place called Gutlong Nizamiya Chuburi under Tezpur PS, the accused named Md. Safiqul Haque @ Islam scolded the

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informant named Must. Rahima Begum by using filthy languages and thereby committed an offence punishable u/s-294 of IPC?

- (ii.) Whether on the same date and place, the accused person threatened the informant with dear consequences of her life and thereby committed an offence punishable u/s 506 of IPC?

EVIDENCE OF PROSECUTION SIDE

7. In this case prosecution side to prove the contentions of the ejahar examined as many as five numbers of witnesses including the informant of this case. Let us reproduce the relevant part of the evidences adduced by the prosecution witnesses for the sake of proper appreciation.
8. PW-1, Md. Rafiqul Islam deposed before this court that he knows the informant of this case. He also knows the accused of this case. He deposed that in the year 2017 one day accused uploaded a joint photo in the Facebook account with the informant and one Arif Hussain shown him the said photo. He knows this much. PW-1 during cross-examination testified that Arif shown him the said photo in his mobile phone. He also deposed that he could not say there was any quarrel took place between the accused and informant.
9. PW-2, Must. Rahima Begum being the informant of this case deposed that she knows the accused of this case. She also deposed that accused uploaded a joint photo with her in his Facebook account and she had seen the said photo in the mobile phone of her husband for which there was quarrel took place between her and her husband. She also deposed that regarding the same when she went to the house of accused to enquire about the same, the accused threatened her of dire consequences. Thereafter, she lodged the ejahar against him. She identified her ejahar as Ext-1 and Ext-1(1) is her signature.
10. PW-2 in her cross-examination testified that she has no any Facebook account. She deposed that she has not mentioned the mobile number of accused. She

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also deposed that she has mentioned the mobile number her brother Mainul Haque in her ejahar. She further deposed that she has not mentioned in her ejahar that she has seen her photo in the Facebook account of her husband. She denied the fact that the accused has not uploaded the photograph in his Facebook account. She deposed that on seeing the said photograph she went to the house accused to ask about the same. She deposed that she was not at home when police went to her house for interrogation. She deposed that police did not seize the mobile phone of her husband. PW-3, Must. Sanara Begum does not know anything about the alleged incident.

11. PW-4, Md. Mainul Haque deposed that the informant is his elder sister and the accused is known to him. He also deposed that in the year 2018, there was quarrelled between his sister and the accused but he does not know for which reason the said quarrel took place between them. Later, his sister lodged the ejahar. He knows this much. His cross-examination was declined by defence side.
12. PW-5 Mainuddin Sheikh deposed before this court that the informant is his wife. He knows the accused person of this case. He also deposed that around 4-5 years back accused circulated photograph of his wife in different mobile numbers. He further deposed that he does not know from where the accused got photo of his wife and due to that his wife lodged ejahar against the accused. PW-5 in his cross-examination testified that he does not know the mobile numbers where his wife's photo has been circulated by the accused.

DISCUSSION, DECISION AND REASONS FOR SUCH DECISION

13. In this case the prosecution side has got the burden of prove of the following facts:-
 - (I) That accused has posted a joint photograph of informant with him in his Facebook account

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(II) That accused at the time of uploading the Facebook post of photograph claimed that he had maintained 14 years of love affairs with the informant.

(III) That the said posting in Facebook defamed the informant in front of general public causing mental torture.

(IV) That accused uses filthy languages against the informant and threatened the informant with dire consequences.

14. From the aforesaid prime accusations, this court finds that the prosecution side has got the burden of prove to the offences punishable under section-294/506 of Indian penal Code by adducing credible evidence before the Court.
15. It is worth mentioning that, the criminal jurisprudence of the country rests on the principle of proving the guilt of the accused beyond all reasonable doubt by the prosecution. There must not be any shadow of doubt on the truthfulness of the prosecution case. This being the cardinal principle of criminal jurisprudence, we must scrutinize the evidence produced by the prosecution from all possible corners and must also test the veracity of the witnesses. If the witnesses are found as wholly reliable on the point of guilt of the accused then only the accused can be held as guilty of the alleged crime.
16. Now, coming to the appreciation of the evidences on record, this court finds that PW-1 in his evidence testified that accused uploaded photograph in the Facebook and one Arif had shown it and the said photograph was of accused and the informant. He in his cross-examination admitted that one Arif had shown the photographs in his mobile phone and he does not know whether any quarrel took place between them. PW-2 is the informant and as per her evidence accused uploaded her photo along with him in his Facebook account and she had seen the said photograph in the mobile phone of her husband. She also claimed that there was a miss-understanding due to such upload with her husband and she went to the house of accused at 9 AM and accused threatened her of physical assault. The evidence presented by PW-2 makes it

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categorical that she had failed to utter any single word to support the prime accusations of scolding her using filthy languages. She simply stated that there was a photograph uploaded by the accused and when she went to ask the accused about such, the accused threatened her to physical assault. She had not pleaded or supported anything regarding the fact as she pleaded in her ejahar. She had pleaded affirmed in her ejahar claiming that after uploading her picture with him the accused had claimed that he had maintained 14 years of love affairs with her and that causes mental torture but surprisingly, she had not utter any single word to support such fact. The victim-cum-informant also did not support of scolding her using filthy languages by the accused.

17. Now, coming to the fact of uploading her picture by the accused as claimed by the informant in her ejahar as well as in her evidence, this court finds that the prosecution side failed to adduce any documentary forms of evidence to substantiate such fact where specific plea regarding uploading of a picture which belongs to informant in Facebook, the prosecution ought to have adduce evidence in documentary form to substantiate such accusation before the court. The I/O during the time of investigation also failed to collect or seize the mobile phone of the accused to substantiate the fact of uploading a picture belongs to the informant. Hence, this court finds that the relevant fact of uploading a picture in Facebook account of the accused with chimed obscenity of love affairs not appears to be supportive and corroborative from the evidence presented by the prosecution side.
18. PW-4 one Mainul Haque testified that in the year 2018, there was quarrel between his sister and the accused but he does not know for what reason the said quarrel took place between them. PW-5 testified that accused circulated photograph of his wife in different mobile numbers and he does not know from where the accused got photo of his wife and due to that his wife lodged ejahar against the accused. He in his cross-examination admitted that he does not

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know the mobile number where his wife's photograph has been circulated by the accused.

19. To sum up the evidences on record, it is seen that PW-4 appears to be the brother of informant and PW-5 is the husband of the victim and both of them in their evidence failed to support the testimony of victim in respect of her physical abuse by the accused as claimed by the victim in her evidence. PW-4 Mainul Haque, who is the brother of the victim and his name had uttered by the victim during her cross-examination stating that the mobile number which she had mentioned in the ejahar belongs to her brother Mainul Haque PW-4 displayed a complete goodbye to the prosecution story by way of testifying that there was a quarrel took place between the informant and the accused in the year 2018. But he does not know for what reason said quarrel took place. The husband of the victim contradicted the version of informant by way of testifying that the accused has circulated photograph of his wife and due to that his wife lodged ejahar against the accused. He does not know in whose mobile number the photographs were circulated. Hence, it is seen that the evidences presented by PW-4 and PW-5 appears to be contradictory with the version of informant. The victim had not pleaded or supported the fact of using filthy languages by the accused against her. Although, she had testified that she was physically abused by giving threat of her physical assault. Such fact of physical assault also not been supported and corroborated by her husband and her brother.
20. In the aforesaid circumstances, this court finds that the evidences presented by the prosecution witnesses are not only appears to be contradictory but also full with lots of shortcomings and as such their testimonies cannot be relied upon.
21. Therefore in the light of aforesaid discussion, this court constrained to opine that prosecution side failed to prove the charges levelled against the accused person beyond reasonable doubt. Hence, the accused person is entitled to get the benefit of doubt and consequent to that accused person is acquitted from

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the charge **u/s-294/506 of IPC** and sets at liberty. Surety is extended for six months in view of section 437A of Cr PC.

22. Accordingly, the case is disposed of. Judgment is prepared and pronounced in open court. Given under my hand & seal of this court on this 05th day of February, 2021 at Tezpur.

(Sri N. J. Hoque)
Chief Judicial Magistrate,
Sonitpur: Tezpur

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ANNEXURE

1. Witnesses for Prosecution:-

PW-1:- Md. Rafiqul Islam

PW-2:- Must. Rahima Begum, Informant

PW-3:- Must. Sanara Begum

PW-4:- Md. Mainul Haque

PW-5:- Md. Mainuddin Sheikh

2. Witnesses for Defence: NIL

3. Court Witnesses: NIL

4. Prosecution Exhibits:

Ext-1 :- FIR

Ext-1(1):- Signature of PW-2

5. Defence Exhibits: NIL

6. Material Exhibits: NIL

**Chief Judicial Magistrate
Sonitpur, Tezpur**